

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEB 10 2000

In the Matter of)
)
 Establishment of a Class A)
 Television Service)
)

MM Docket No. 00-16
 MM Docket No. 99-292
 RM-9260

To: The Commission

**COMMENTS OF
NATIONAL MINORITY T.V., INC.**

National Minority T.V., Inc. ("NMTV") hereby submits its Comments concerning the Order and Notice of Proposed Rulemaking ("*NPRM*") in the above-referenced proceeding, released January 13, 2000.¹ The proceeding, which was initiated to implement the Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999) (the "Act"), requests comment on certain provisions of the Act, including the criteria for Class A eligibility, the definition of programming produced within a station's "market area," and whether Class A licensees should be exempt from certain rules in Part 73. These Comments address these issues.

Background

NMTV is a nonprofit non-stock minority owned company which is the licensee of full-power television Station KNMT(TV), Channel 24, Portland, Oregon and the licensee of numerous low power/television translator stations located throughout the country. Three of NMTV's four directors are minorities - two African Americans and one Hispanic American. Moreover, NMTV's President

¹ These Comments are timely filed in response to the *NPRM*.

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(and director) is a female as well as an African American. NMTV is one of a small number of minority owned licensees in this country.

NMTV has notified the Commission that it intends to operate most of its LPTV/TV translators as low power facilities. With respect to those facilities that were not currently airing three hours of locally produced programming between August 28 and November 28, 1999, NMTV has filed Statements of Eligibility applying for Class A status and advising that it intends to meet the local origination requirement. NMTV also has certain outstanding construction permits and has filed Statements of Eligibility for those facilities stating that it intends to meet the local origination requirements when the stations commence operation.

As a minority-owned entity, NMTV has been committed to operating its LPTV/translator stations to serve minority viewers. As the Commission is aware, LPTV/TV translator stations are the service with the highest minority ownership, and they primarily serve smaller communities and discrete audiences within larger communities. Under the Commission's current digital television allotment plan, the displacement of LPTV/TV translator stations severely threatens the industry's future. The Commission should not allow the unique voice and service provided by LPTV/TV translator stations to be silenced.

Consequently, NMTV supports the Act's creation of a Class A service that would give qualified LPTV stations primary spectrum user status against all later authorized full power and low power television stations. NMTV submits, however, that: (1) the class of eligible licensees should be expanded to include licensees and permittees² who meet the qualifications to qualify for Class A status in the future; (2) the definition of the type of programming required to meet the requisite "3

² NMTV believes that the Commission should also grant Class A status to permittees who certify that they will meet program origination requirements.

hours per week” should be clarified; (3) because of financial and administrative constraints, Class A licensees and permittees should not have to comply with all of the full power rules; (4) the call signs for Class A stations should not use the suffix “-LP” because this suffix will be used for LPFM stations.

Discussion

I. The Scope Of Applicants Who Qualify For Class A Service Should Be Expanded To Include Those Who, In The Future, Meet Qualifications Established by the Commission.

In the *NPRM*, the Commission seeks comment on whether it may accept future applications to convert to Class A, after the application deadline set out in the Act, and whether stations that do not meet the eligibility criteria set out in section (f)(2)(A) of the Act should be considered for Class A status. The limited class of low power television stations that would qualify for Class A status under section (f)(2)(A) of the Act is unduly narrow, and NMTV strongly urges the Commission to expand the scope of qualifying applicants to include those who, in the future, meet the qualification requirements for Class A status. Accordingly, the Commission should grant Class A status to those who seek it after the statutory deadline.

The Act, at section (f)(2)(A), states that a station qualifies for Class A status if: (i) during the 90 days preceding the enactment of the Act, the station broadcast a minimum of 18 hours per day; (ii) such station broadcast an average of at least 3 hours of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; (iii) such station was in compliance with the Commission’s requirements applicable to low-power stations; and (iv) from and after the date of its application for a Class A license, the station is in compliance with the Commission’s operating rules for full-power stations.

The Act limits the low power television stations that can qualify for Class A status to those that met the requirements for qualification “during the 90 days preceding the date of the enactment” of the Act, i.e., between August 28 and November 28, 1999. This unjustly limits the low power stations that could ever qualify for Class A status to a certain group of stations that had already met the qualification requirements three months before the Class A service was even created. This is not what Congress intended when it passed the legislation, or what the Commission intended when it issued *NPRM I*.³ Congress’ intent was to give LPTV/TV translator stations that “can demonstrate that they provide valuable programming to their communities” commercial viability by raising their regulatory status to be “roughly similar” to that of full service stations.⁴ Congress did want to limit qualification for Class A status to those stations who broadcast programming originated in their market areas in order to exclude LPTV/TV translator stations that provide little or no original programming.⁵ However, Congress did not state that it intended to exclude those stations that were able to provide market-area produced programming in the future.⁶

In addition to the above-stated eligibility criteria, the Act, at section (f)(2)(B), states that the Commission may establish alternative eligibility criteria if “the Commission determines that the public interest, convenience and necessity would be served by treating the station as a qualifying low

³ In *NPRM I*, the Commission sought comment on whether Class A status should be ongoing as LPTV/TV translator stations become qualified. See *NPRM I* at ¶ 46. The Commission agreed that it may be “unduly restrictive” to limit the opportunity to convert to Class A status to only those stations that could qualify within a specific period. *Id.*

⁴ See *Cong. Rec.* at H11810 (November 9, 1999).

⁵ *Id.*

⁶ Both Congress and the Commission address the fact that not all LPTV/TV translator stations (of which there are more than 7, 100) could be awarded primary status because there is insufficient spectrum due to the emerging DTV service. See *Cong. Rec.* at H11810 (November 9, 1999); See *NPRM* at ¶ 6. However, not all LPTV/TV translator licensees broadcast or intend to broadcast original programming and, therefore, would not attempt to qualify for Class A status.

power television station for purposes of this section, or for other reasons determined by the Commission.”⁷ This section gives the Commission the authority to determine that stations, who do not meet the criteria under section (f)(2)(A), qualify for Class A status if it would be in the public interest or “for other reasons.” Clearly, this language authorizes the Commission to allow stations that meet the eligibility criteria in the future to qualify for Class A status. Consequently, based on congressional intent and the language of section (f)(2)(B) of the Act, the Commission is permitted to accept applications for Class A status from LPTV licensees who meet the requirements for Class A eligibility in the future.

Limiting Class A status to licensees or permittees who qualify under Section (f)(2)(A) is particularly harmful to small broadcasters, minorities, women and others who were not involved in lobbying activities on Capitol Hill. NMTV and other minority and female-owned low power licensees should be allowed to qualify for Class A status if they provide an average of three hours of local programming per week in the future. It is well known that there is a financial burden associated with local program production, especially in areas where the communities served are relatively small. The incentive of achieving Class A status will inspire licensees, such as NMTV, to invest more finances and energy into the production of local programming. For instance, NMTV has ties with local groups in a number of the communities in which it operates stations, and those local groups have expressed the desire to work with NMTV in producing local programming. NMTV and other similarly situated licensees will be more committed to working with community groups to produce local programming, if they are rewarded with Class A status. Also, by allowing stations who meet the requisite number of local programming hours that must be aired per week to qualify in the future for Class A status, LPTV/TV translator stations will be able to make the

⁷ 47 U.S.C. §336(f)(2)(B); *see NPRM* at ¶ 21.

transition to digital operation with minimal disruption, allowing them to focus on building contacts within the community and continuing to create programming that best serves the needs of its audience.

Thus, NMTV urges the Commission to broaden eligibility for Class A status to include LPTV stations that commence the transmission of local programming within a period of time to be announced. Expanding the definition of a “qualified” station is consistent with the Commission’s obligation under Section 257 of the Telecommunications Act of 1996 to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services . . . and promote the policies and purposes of this Act favoring diversity of media voices, [and] vigorous economic competition.”⁸ The Commission should expand the scope of LPTV/TV translator stations qualified to become Class A stations to include stations that can demonstrate compliance with the qualification requirements in the future.

II. The Definition Of The Type Of Programming Required To Meet The “Average of At Least 3 Hours Per Week” Requirement Should Be Clarified.

In the *NPRM*, the Commission seeks comment on using a station’s protected service area as a definition of “market area” to determine if programming is locally-produced and on whether repeated programming or locally produced commercials should contribute to the mandatory 3 hours of locally produced programming.⁹ NMTV believes that the definition of the type of original, locally-produced programming that is required to be transmitted for 3 or more hours per week in order for a low power station to qualify for Class A status, should include programming that is

⁸ See *Notice of Proposed Rulemaking, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 99-292, RM-9260, FCC 99-257 at n.67 (rel. Sept. 29, 1999) (“*NPRM I*”).

⁹ See *NPRM* at ¶ 19.

originated, taped or filmed within the station's Designated Market Area ("DMA"), not its protected service area. NMTV also believes that repeat programming and public service announcements should count towards the 3 hours of locally produced programming.

Section (f)(2)(A) of the Act requires that a qualifying low power television station "broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group." The word "produced" and the term "market area" are not defined in the Act. NMTV submits that programming that is originated, taped or filmed within the DMA, not the protected service area, should be the appropriate standard.

In addition, the Commission should include Public Service Announcements and repeat programming in the "average of at least 3 hours or more per week" of programming required for Class A status. Congress did not address the type of programming permitted for qualification as a Class A station in the Act; therefore, the task of making this determination rests with the Commission. PSAs have long been recognized as serving the public interest. For instance, in its Report and Order implementing the Children's Television Act, the Commission stated that "short segment programming, including vignettes and PSAs . . . is well suited to children's short attention spans and can often be locally produced with acceptable production quality."¹⁰ Repeat programming is permissible as a means to establish the requisite number of hours of educational and informational

¹⁰ See *Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 6 FCC Rcd 2111 at ¶ 25 (1991).

programming under the Children's Television Act of 1990.¹¹ Given the fact that PSAs and repeat programming are credited in other contexts, they should be a permissible basis for reaching the "average" of at least 3 hours per week needed to gain Class A status.

III. Class A Licensees Should Not Be Subject To Full Power Rules That Would Prove Burdensome To Minority-Owned Businesses and Businesses Operated on A Non-Profit Basis.

The *NPRM* seeks comment on whether the Class A service should be included in Part 73 or Part 74 of the Rules and whether there are any Part 73 rules that should not apply to Class A stations, based on technical and "other reasons."¹² NMTV believes that low power licensees who do achieve Class A status will find it burdensome to comply with all of the full power rules under Part 73.

Certain full power rules, such as the station main studio rule, the political broadcast rule, the children's television rule, and the retention of letters received from the public rule would be very financially and administratively burdensome for low power licensees. Many low power licensees are, like NMTV, non-profit or minority-owned small businesses and individuals who neither have the staff nor the financial resources to comply with such rules. Many are educational or religious entities. LPTV stations lack the resources that full-power stations have, in terms of personnel and financing, to comply with all of the rules under Part 73. Relief from as many of these requirements as possible is necessary. The Commission took this same argument into consideration when it created the Low Power Radio Service ("LPFM").¹³ In that proceeding, the Commission decided to exempt LPFM licensees from certain Part 73 requirements, such as maintaining issues and

¹¹ See *Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations*, 11 FCC Rcd 10660 at ¶ 132 (1996).

¹² See *NPRM* at ¶ 20.

¹³ See *Report and Order, In the Matter of Creation of Low Power Radio Service*, MM Docket No. 99-25, FCC 00-19 (rel. January 27, 2000).

programming lists, requiring specific programming (such as children's television programming), maintaining a main studio and public file, and reporting ownership information, because "these requirements would place an undue burden" on these stations and "the nature of the service will ensure that [such] stations are responsive to their communities".¹⁴ The same reasoning can be applied to Class A licensees. In addition, since both the Commission and Congress were concerned about the financial viability of LPTV/TV translator stations when they envisioned the Class A service,¹⁵ the Commission should recognize the financial and administrative burdens it would be placing on Class A licensees who are required to comply with all of the full power rules. Indeed, imposing the same children's programming requirement on LPTVs that full power stations have is particularly unfair given the vast difference in full power and LPTV facilities in terms of revenues and personnel. The Commission should exempt Class A licensees from such burdensome Part 73 regulatory requirements and, therefore, should group the new Class A service under the Part 74 rules that govern low power stations.

IV. Because LPFM Stations Will Use The Suffix "-LP", The Call Sign Suffix For Class A Stations Should Be Changed To "-A", Or A Similar Suffix.

NMTV believes that, in light of the creation of the LPFM service and the Commission's decision to apply the suffix "-LP" to call signs to identify that service, Class A stations should not be identified with the "-LP" suffix.¹⁶ The suffix used to identify Class A stations should be changed to "-A" and the suffix used to identify translators should be changed to "-TR" or something similar. Radio and television stations have never shared the same call sign identifiers, because they are

¹⁴ See *Report and Order, In the Matter of Creation of Low Power Radio Service*, MM Docket No. 99-25, FCC 00-19 (rel. January 27, 2000) at ¶¶ 164-186.

¹⁵ See *Cong. Rec.* at H11810 (November 9, 1999); see *NPRM I* and *NPRM*.

¹⁶ See *Report and Order, In the Matter of Creation of Low Power Radio Service*, MM Docket No. 99-25, FCC 00-19 (rel. January 27, 2000) at ¶¶ 177-179.

different services. The Commission should change the suffix used for Class A stations, so it is not the same as that used for LPFM stations.

Conclusion

For the foregoing reasons, NMTV urges the Commission to consider the suggestions set forth above in implementing a Class A service that will provide incentives to low power licensees to produce original, local programming and will protect the many minority-owned small businesses that comprise the LPTV service.

Respectfully submitted,

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Dated: February 10, 1999

CERTIFICATE OF SERVICE

I, Karleen Lamie, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **"COMMENTS OF NATIONAL MINORITY T.V., INC."** were hand-delivered this 10th day of February, 2000 to the following:

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